

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

JOSHUA REILLY,

Plaintiff,

Hon. Janet T. Neff

v.

Case No. 1:09-CV-892

MICHIGAN DEPARTMENT
OF CORRECTIONS, et al.,

Defendants.

REPORT AND RECOMMENDATION

This matter is before the Court on Defendants' Motion to Dismiss and/or Consolidate. (Dkt. #27). Pursuant to 28 U.S.C. § 636(b)(1)(B), the undersigned recommends that Defendants' motion be **granted** and this action transferred to the United States District Court for the Eastern District of Michigan.

Plaintiff initiated this action in August 2009, in Wayne County Circuit Court. The matter was subsequently removed to this Court, as well as to the United States District Court for the Eastern District of Michigan. Defendants now move to either dismiss the action in this Court or, in the alternative, to consolidate this action with the Eastern District proceeding. Plaintiff failed to respond to Defendants' motion. The Court subsequently issued an Order to Show Cause directing Plaintiff to "either stipulate to Defendants' motion or show cause why Defendants' motion should not be granted." Plaintiff simply ignored the Court's Order. The Court notes, however, that Plaintiff is actively prosecuting the Eastern District action.

In support of the present motion, Defendants assert that the events giving rise to this action occurred in Detroit and that all the parties reside in the Eastern District. Plaintiff has not contested these assertions and there is nothing in the present record to call such into question. Accordingly, the undersigned recommends that the present action be transferred to the United States District Court for the Eastern District of Michigan. *See* 28 U.S.C. § 1404(a) (“[f]or the convenience of parties and witnesses, in the interest of justice, a district court may transfer any civil action to any other district or division where it might have been brought”).

CONCLUSION

For the reasons articulated herein, the undersigned recommends that Defendants’ Motion to Dismiss and/or Consolidate, (dkt. #27), be **granted** and this action transferred to the United States District Court for the Eastern District of Michigan.

OBJECTIONS to this Report and Recommendation must be filed with the Clerk of Court within fourteen (14) days of the date of service of this notice. 28 U.S.C. § 636(b)(1)(C). Failure to file objections within the specified time waives the right to appeal the District Court’s order. *See Thomas v. Arn*, 474 U.S. 140 (1985); *United States v. Walters*, 638 F.2d 947 (6th Cir.1981).

Respectfully submitted,

Date: September 9, 2010

/s/ Ellen S. Carmody
ELLEN S. CARMODY
United States Magistrate Judge